

APPLICANTS:**Krishna and Savitri Pollard****REQUEST: An interpretation of Section
267-39C(7)(g) of the Harford County Code.****HEARING DATE: September 27, 2006****BEFORE THE****ZONING HEARING EXAMINER****FOR HARFORD COUNTY****BOARD OF APPEALS****Case No. 5555****ZONING HEARING EXAMINER'S DECISION****APPLICANT:** Krishna Dave Pollard**CO-APPLICANT:** Savitri M. Pollard**LOCATION:** 2018 Mountain Road, Joppa
Tax Map: 60 / Grid: 3F / Parcel: 78
First (1st) Election District**ZONING:** AG / Agricultural**REQUEST:** A special exception, pursuant to Section 267-53(D)(3) of the Harford County Code, to allow a motor vehicle repair shop in the Agricultural District, and an interpretation of Section 267-39(C)(7)(g).**TESTIMONY AND EVIDENCE OF RECORD:**

Preliminarily, the Applicants requested bifurcation of the issues in the case so as to receive a ruling on a legal issue before proceeding to the more factually based determination of the special exception. The legal issue upon which the Applicants seek a ruling is whether Code Section 267-39(C)(7)(g) is applicable. This Section, specifically, allows a motor vehicle filling or service station to be permitted only if;

“ . . . all properties adjacent to the proposed use are served by a public water supply.”

The use proposed for the subject property is a motor vehicle repair shop only, not a service station. The subject property is not adjacent to properties which are served by a public water supply.

Accordingly, the Applicants seek an interpretation that the requirement of being adjacent to properties served by public water is not applicable to a request for a motor vehicle repair shop special exception. If it is, in fact, found to be applicable, then the Applicants cannot, presumably, proceed with the motor vehicle repair shop special exception request.

Legal argument only was presented.

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Applicants assert that a ‘motor vehicle repair shop’ is the same as ‘automotive repair shop’, as defined by the Harford County Zoning Code, but that a motor vehicle repair shop is separate and distinct from a motor vehicle filling or service station. The Applicants’ argue that subsection (g) at Section 267-39(C)(7), by its plain language, applies only to motor vehicle filling or service stations. The language of this section does not include “and repair shops”. Accordingly, Applicants argue that it is not applicable to their proposed use, which is a repair shop only. In support the Applicants recite a condition of Section 267-53(D)(3)(b) which states;

“The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in a B2 and B3 Districts shall be met.”¹

In support of their position the Applicants presented a certified copy of Harford County Council Bill 05-23, introduced on May 10, 2005, and effective on August 29, 2005. That legislation had as its purpose a revision of the Harford County Development Regulations so as to permit;

“... motor vehicle filling or service stations to be located on parcels only if all properties adjacent to the proposed use are served by a public water supply; and generally relating to motor vehicle filling and service stations.”

See preamble to Council Bill 05-23.

Applicants also introduced Minutes of the Public Hearing on Bill 05-23. In the Minutes Council Member Cassilly is reported as stating;

“... no retail gas station should be constructed on any property that is not served by public water or next to a lot that is not served by public water. This is to protect the ground water. The County learned last summer of the MTBE problem in the Fallston area and does not want a repeat of the incident in the future.”

There are certain other reported comments concerning the Bill within the Minutes, among those the following statement by Mr. Cassilly:

“This is a stop gap measure that would be in effect while the Council worked to develop stronger legislation.”

¹ See July 27 letter of Applicants’ counsel which summarizes his argument.

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The Harford County Department of Planning and Zoning does not support the interpretation requested by the Applicants. The Department's opinion is:

*"The Department believes that all requirements of Section 267-39(C)(7) apply to Motor Vehicle Repair Shops in the AG and B1 Districts. The language in Section 267-53D(3)(b) is clear that motor vehicle repair shops must meet all the requirements of Section 267-39(C)(7) for **service stations** and repair shops in the B2 and B3 Districts. If the County Council wished to exclude certain requirements they could have deleted the words service stations from Section 267-53D(3)(b) or listed the specific requirements under 267-39(C)(7) which would apply to motor vehicle repair shops."*

APPLICABLE LAW:

The Applicants have requested a special exception to § 267-53(D)(3)(b) of the Harford County Code, which states in pertinent part:

- "(3) Motor vehicle repair shops. These uses may be granted in the AG and B1 Districts, provided that:*
- (b) The requirements of Section 267-39(C)(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met."*

The Applicants during this phase of their case request an interpretation that Section 267-39(C)(7)(g) of the Harford County Code does not apply to their special exception request. That section states:

- "(7) Motor vehicle filling or service stations and repair shops, in the B2 and B3 Districts, provided that:*
- (g) A motor vehicle filling or service station shall only be permitted if all properties adjacent to the proposed use are served by a public water supply."*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Applicants' attorney proffers that the Applicant Krishna Dave Pollard, who is employed as a body and fender technician, wishes to construct an apparently 3,000 square foot shop on the subject property in order to do automotive restoration work.

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The Applicants, of course, will be required to meet the special exception standards of motor vehicle repair shops contained at Section 267-53(D)(3) for such a repair facility.

However, subsection (b) of that section states as follows:

“The requirements of Section 267-39(C)(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.”

Accordingly, it can be seen that a motor vehicle repair shop special exception incorporates within it the requirements of the Code section for service stations. It appears that motor vehicle repair shop requests, if they are to be in compliance with all applicable statutory criteria, meet both Sections 267-53(D)(3) and 267-39(C)(7). No suggestion is made by the Department of Planning and Zoning that these sections are not fully applicable and have not been applied to all motor vehicle repair shop special exceptions.

However, the Harford County Council in the year 2005, apparently as a result of the MTBE issue which first arose in the Upper Cross Roads area of the County, determined that service stations should not be allowed next to properties not serviced by public water. This was obviously to reduce the impact of potential MTBE contaminates. This legislation was proposed and passed with what appears to be very little discussion.

Furthermore, no discussion during the enactment of that amendment is reported concerning motor vehicle repair facilities, or what would appear to be the requirement to apply the proposed ‘public water’ amendment to the repair shops special exception. The Council either simply did not know of the potential application of the new requirement to repair shops, or it did know and simply chose not to address it during public hearing.

The Applicants in the present case, of course, suggest that they meet all requirements except for the newly enacted one of being located next to properties which have public water. The Applicants obviously take exception to its application to them, and assert that the amendment applies only to service stations and not to repair facilities. The Applicants’ property does not have any pumps, and it will not dispose petroleum products. In making this argument the Applicants rely heavily upon the language of Section 267-39(C)(7)(g) which states;

“A motor vehicle filling or service station shall only be permitted if all properties adjacent to the proposed use are served by a public water supply.”

The Applicants’ argument is that this language does not include ‘repair facility’ and therefore is applicable only to filling stations, despite the language of Section 267-53(D)(3)(b) which appears to include all requirements “for service stations and repair facilities.”

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The Applicants argue that they propose a repair shop only, and, therefore, requirements relating solely to service stations, such as 7(g) above, do not apply. Further, say the Applicants, their use will not generate a possible MTBE hazard since the Council was concerned about MTBE hazards. The change in law must be directed only to service stations, not the Applicants' repair facility.

Unfortunately for the Applicants' argument, a close reading of the two special exception statutes leads to a different conclusion. A motor vehicle repair special exception, as stated above, incorporates motor vehicle filling station special exception requirements. The Code provides, in perhaps an unusual form, that the special exception requirements for a repair shop include within them by reference the requirements of another section, i.e., the filling station special exception. The drafters of the Code could have set forth all of the applicable conditions for a repair shop within the repair shop special exception, but chose to do it by incorporating by reference other conditions. That this is the intent of the original drafters is made clear by the condition which states;

*"The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts **shall** be met."*
(emphasis supplied)

This section does not state, for instance, only 'applicable requirements', it does not state 'pertinent requirements', it does not state 'some requirements', it states "The requirements. . . **shall** be met".

A thorough review of this section does not leave room for discretion. The requirements shall be met, even if those requirements are, as the Applicants suggest, arguably, more pertinent to filling stations than repair shops.

Furthermore, it cannot be said that the Council did not intend these requirements to also be applicable to repair facilities. Repair facilities entertain vehicles which have fuel and oil storage capacities. Leaks and contamination are not unknown in such facilities. While there is no mention made in the Minutes of the Council's desire to specifically apply the public water condition to repair facilities, there is nothing in the language to suggest it did not intend to include this requirement. It simply cannot be found that the Council meant anything other than as the statute now reads. A fair reading of that statute is that **all** motor vehicle filling station requirements must be applied to repair facilities.

This finding may cause the Applicants consternation, and the Applicants may look upon this as being an unfair finding. However, the neighbors surrounding the Applicants, who draw their water from wells, may also look upon any other decision as being unfair and not protective of their rights.

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It is accordingly found, that the statute is clear, it is not ambiguous, and all conditions of the filling station special exception must be applied to the motor vehicle repair facilities, and not simply those conditions which the Applicants believe, subjectively, should only be applicable to them.

A final note. The arguments of the Applicants are well taken, and their position is somewhat sympathetic, in that it would be unfortunate to apply regulations to them that were not intended to be applicable. However, statutes are to be strictly interpreted, and once their plain meaning is found, it is to be applied and followed;

“The cardinal rule of statutory interpretation is that the intent of the legislature is to be sought in the first instance from the words used in the statute, and where there is no ambiguity or obscurity in the statute, the words used are conclusively presumed to embody the meaning of the legislature in enacting the statute.” See Pineland Lumber Co. v. Miles, 228 Md. 584 (1962).

If changes are to be made, they should be made by the legislative body which enacted the statute.

CONCLUSION:

For the above reasons, it is recommended that the requested interpretation be denied.

Date: October 17, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 15, 2006.